

NOT INCLUDED IN
BOUND VOLUMES

MHJ
Heavener, OK

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

OK FOODS, INC.

and

Case 14-RC-124829

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 1000, AFL-CIO

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held May 1, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of votes shows 26 for and 29 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings¹ and recommendations as modified below,² and finds that the election must be set aside and a new election held.

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

² In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Petitioner's Objections 5, 8, 10, and 11.

We adopt the hearing officer's findings that the critical-period exchange between the Employer's vice president, Mike Martin, and its labor consultant, Matthew Perovic, implying that employees would receive raises if they voted against the Union, reasonably interfered with employee free choice and thus constituted objectionable conduct sufficient to warrant overturning the election. For this reason, we find it unnecessary to pass on the hearing officer's additional findings that the Employer engaged in objectionable conduct when CEO Trent Goins solicited employees' grievances at a weekend-shift lunch meeting and impliedly promised to

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in

remedy them and that the Employer engaged in objectionable conduct when Diane Baker, a human resources officer, told an employee that she "could not hear any more" about his wage complaint due to union activity. Member Hirozawa would adopt these findings.

Member Miscimarra agrees that the exchange between Martin and Perovic warrants overturning the election. At a captive-audience meeting with unit employees during the critical period, the subject was raised of certain retroactive increases that some employees had received and others had not. Martin asked Perovic if the Employer could give the increases if employees "were to shoot the Union down," and Perovic answered in the affirmative. In finding this exchange objectionable, Member Miscimarra relies on three considerations. First, the question about giving increases was posed by Martin, a high-ranking manager, not by an employee, and Martin used the phrase "shoot the Union down" in conjunction with his question about wage increases. Second, the record shows the exchange occurred after the Employer had already given pre-petition wage increases to some employees, and (as the hearing officer found) those increases had been given because of the Union's presence. Third, the conversation concerned specific raises that certain employees sought rather than the general subject of possible pay increases. These facts distinguish this case from *Libertyville Toyota*, 360 NLRB No. 141, slip op. at 8-9 (2014) (Member Miscimarra, concurring in part and dissenting in part) (absent any context of impermissible wage increases, finding lawful employer's statement, in response to an employee's general question about possible wage increases if the union were not voted in, that there would be a "willingness to consider making adjustments").

an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by the United Food and Commercial Workers, Local 1000, AFL-CIO.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., July 15, 2015.

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD